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CITY OF SUNNYVALE, CHRIS SEARLE and DARREN PANG

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERIKA CANAS, JOSE CANAS, a minor, by
and through his guardian ad litem, and JESUS
CANAS, by and through his guardian ad litem,

Plaintiffs,

v.

CITY OF SUNNYVALE, CHRIS SEARLE,
DARREN PANG and DOES ONE through
TWENTY FIVE,

Defendants.

Case No. 3:08-cv-05771-TEH

**DEFENDANTS' MOTION *IN LIMINE* TO
EXCLUDE TESTIMONY OF THE COLORS
WORN BY DEFENDANT OFFICERS**

(DEFENDANTS' MOTION *IN LIMINE* NO. 6)

Pretrial Conference: August 27, 2012
Time: 3:00 p.m.
Location: Courtroom 2, 17th Floor

Trial: September 11, 2012

Hon. Thelton E. Henderson

I. INTRODUCTION

Defendants Chris Searle, Darren Pang, and the City of Sunnyvale hereby move this Court *in limine* for an Order excluding any and all testimony, reference to testimony, or argument relating to the defendant officers wearing gang colors on September 12, 2007.

II. ARGUMENT

A. Evidence at Issue

Plaintiffs included in the joint pretrial conference statement in their statement about the substance of the action that the defendant officers were wearing blue vests and that this is significant because there is heavy gang activity in the area where the incident occurred and blue is a prominent gang color.

Defendants anticipate that plaintiffs will elicit testimony and/or argue that the decedent believed the officers to be members of a rival gang and thus tried to flee in his car.

B. Evidence and Argument about the Defendant Officers Wearing Gang Colors is Irrelevant and Prejudicial

Evidence which is not relevant is not admissible. FRE 402. To be relevant, the proffered evidence must have a tendency to prove or disprove some fact that is of consequence in this action. FRE 401. Plaintiffs should not be able to put on testimony or argument that the defendant officers were wearing gang colors on the day of the incident. This evidence is irrelevant to the causes of action in this case. What the decedent may have thought when the detectives approached his car is not only completely speculative, it is not relevant to the issue of whether the officers used reasonable force. The only relevant issue is what Detective Pang knew at the time he made his decision to use deadly force. *See Graham v. Conner*, 490 U.S. 386, 396-97 (1989).

Even if this court finds that the evidence is somehow relevant to the issues at hand, it should be excluded because it is more prejudicial than probative. FRE 403. The evidence would be offered to influence the jury to believe that the decedent Jose Canas thought the police were members of a gang and this caused him to try and flee in his car. This evidence is purely speculative and would be highly prejudicial to the defendants while having little probative value. There is no available evidence regarding what Jose Canas believed when he saw defendant officers, and certainly there is no way of knowing whether Decedent believed the officers were members of a rival gang. Therefore, any testimony or argument about this should be excluded because it is purely speculative, irrelevant and highly prejudicial with little or no probative value, and any such testimony or argument would serve only to mislead the jury.

C. The Gang that the Decedent was a Member of Wore the Same Colors as the Defendant Officers

Plaintiffs' potential argument that the Decedent Jose Canas believed the defendant officers were members of a rival gang is contradicted by the fact that the colors the officers wore were the same colors as those worn by Mara Salvatrucha, the gang to which Jose Canas belonged. See, Exhibit A, photographs of Detectives Pang and Searle taken shortly after the incident. Members of the Mara

Salvatrucha gang wear blue, black, and white. See, for example: http://www.gangsorus.com/ms_13.html, attached hereto as Exhibit B. Any argument that Jose Canas believed the defendant officers to be members of a rival gang is not only highly speculative and irrelevant to the issue of whether Detective Pang's decision to use deadly force was reasonable, but is also discredited by the fact that the colors that the officers were wearing were the same colors as those worn by members of Mara Salvatrucha.

D. Plaintiffs' Expert Has Offered No Opinion Regarding Gang Colors

The FRCP Rule 26 expert statement of plaintiffs' police practices expert, Roger Clark, makes no mention of any theory regarding gang colors and Decedent's supposed perceptions or actions. Thus, plaintiffs have not established sufficient preliminary facts that certain colors are associated with a particular gang, and that particular colors would have any significance to Decedent. FRE 702. Plaintiffs should not be permitted to testify regarding an argument not disclosed through and supported by expert testimony.

III. CONCLUSION

Defendants therefore respectfully request an order *in limine* to exclude testimony and argument regarding the defendant officers wearing gang colors on the day of the incident.

Dated: August 21, 2012

BERTRAND, FOX & ELLIOT

By: /s/ Meaghan A. Snyder

Gregory M. Fox

Meaghan A. Snyder

Attorneys for Defendants

CITY OF SUNNYVALE, CHRIS SEARLE and
DARREN PANG

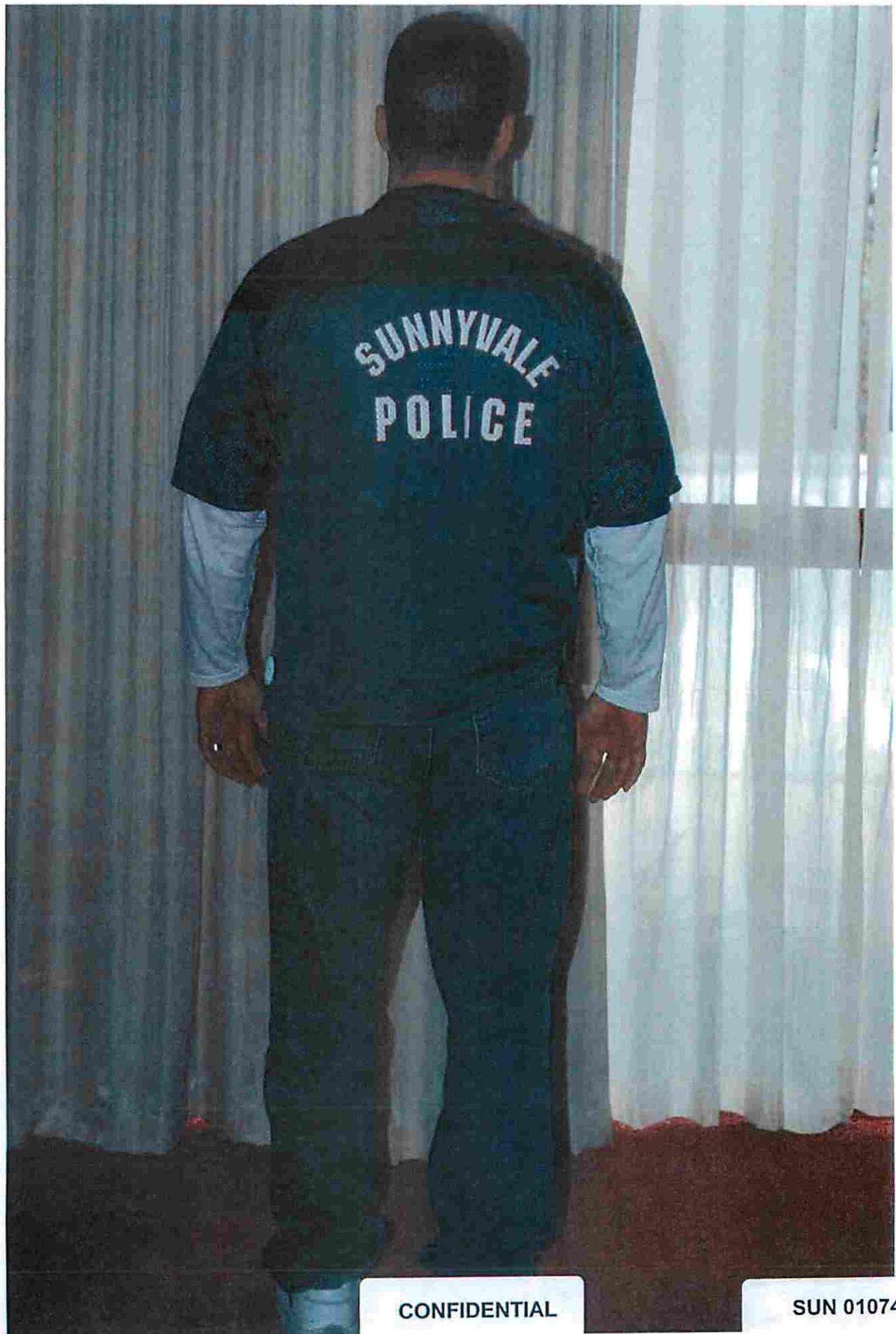
EXHIBIT A

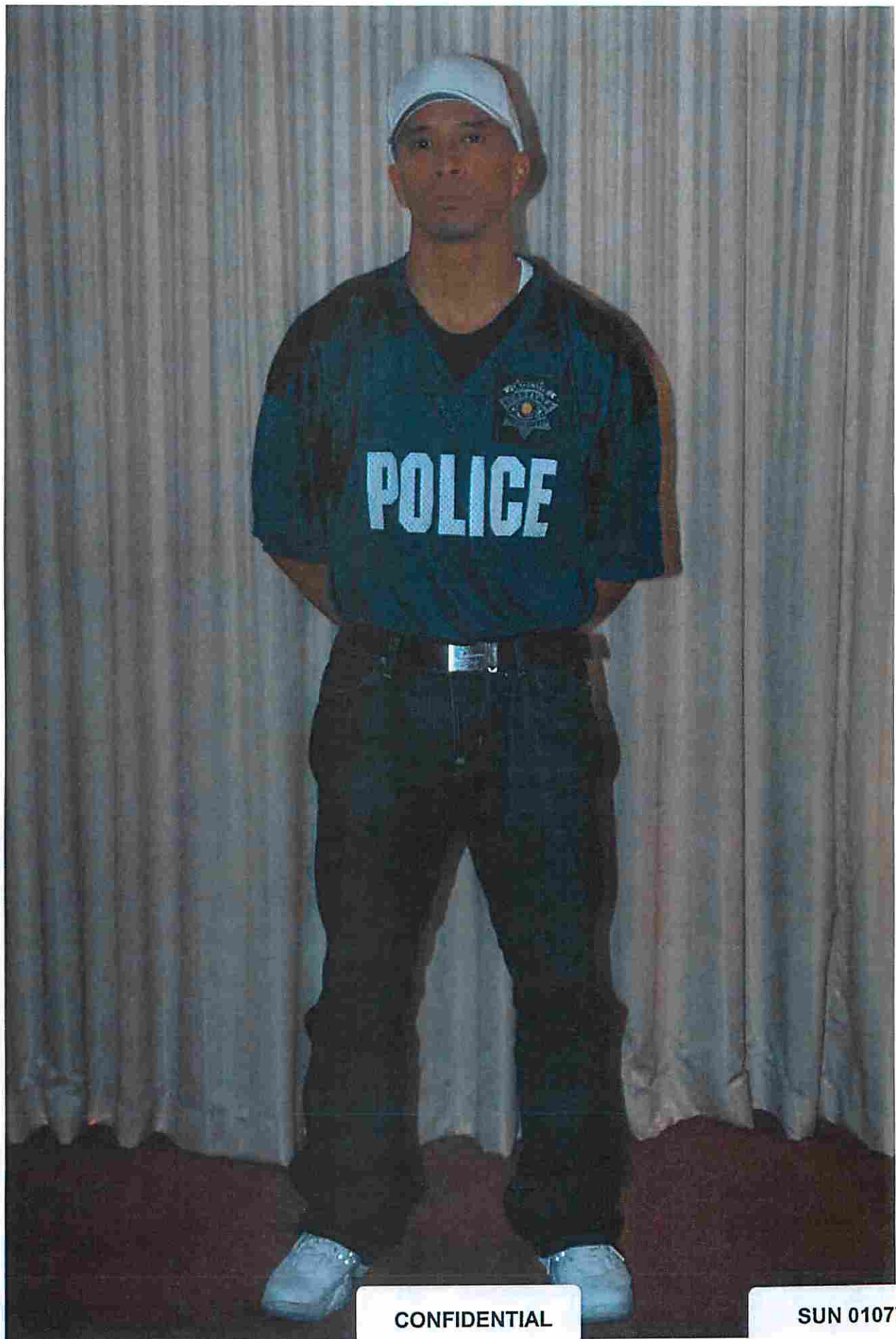
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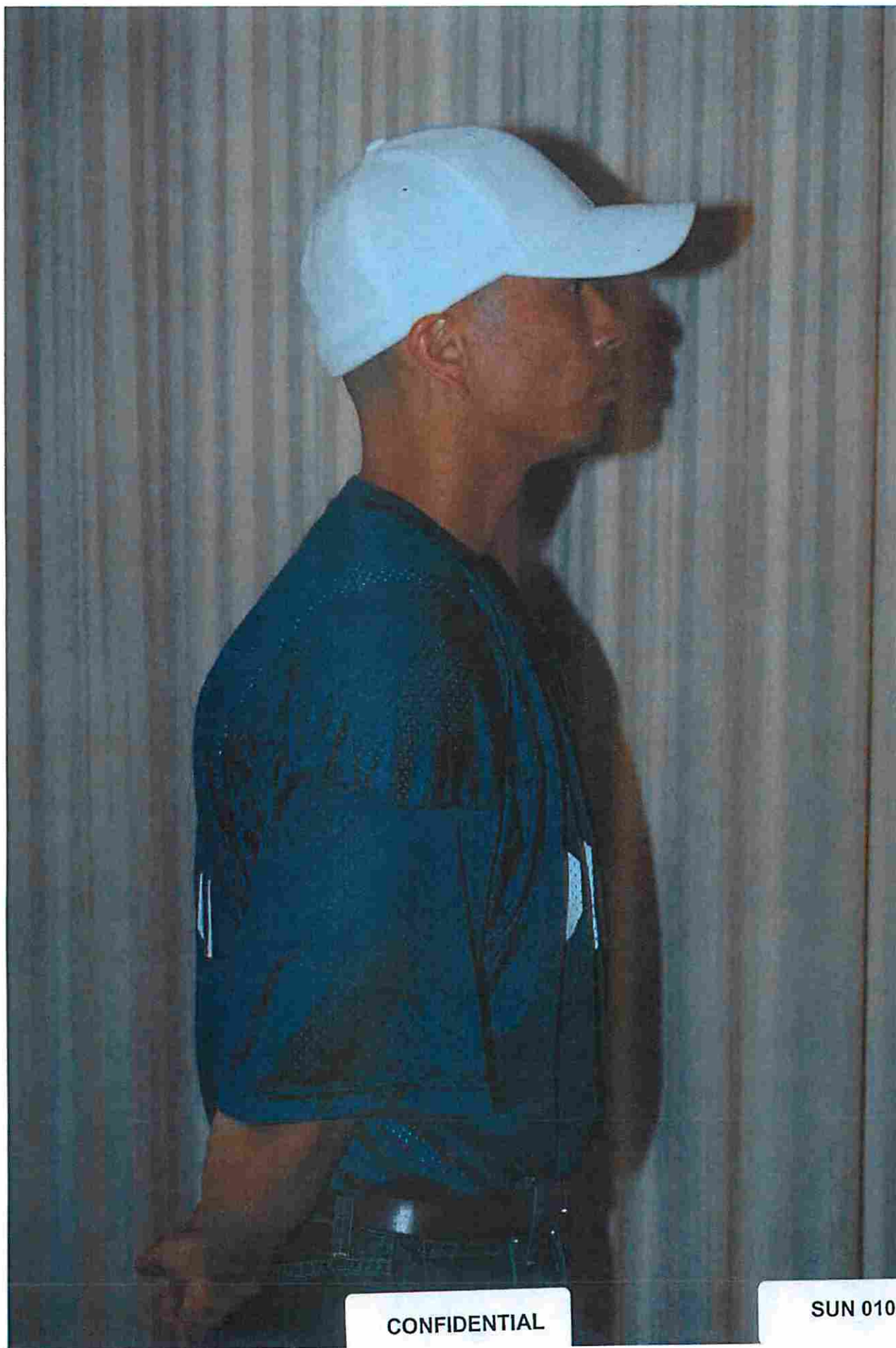


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EXHIBIT B

EXHIBIT B

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MS members have been known to tattoo MS related symbols on much of their body, head to toe. Gang members may carry a bandana (typically blue, but sometimes black) around with them and may wear it around their wrist, neck, forehead, or pocket. MS-13 members like to wear sports clothing that displays strategic numbers like 13, 23, or 3. They also wear jerseys that show the gang colors of blue or black. They are also known to wear white. Some of their favorite jerseys are those of sports figures Allen Iverson (blue 3) and Kurt Warner (Blue 13). Members also will wear Nike Air Jordan hats with the Air Jordan logo resembling their hand sign. New York Yankees apparel is also a favorite of MS-13 members. It is important to note that many young people wear these colors and sport clothing and these indicators alone should not be viewed as evidence of gang membership.



The rapid proliferation of the Mara Salvatrucha to many parts of the United States has not gone unnoticed. The entire gang is on the verge of becoming the first gang to be categorized as an "organized crime" entity. The MS seem to thrive on violence and in my opinion, they are determined to spread fear everywhere they can obtain a base of operations.

MS-13 - A National Geographic Documentary

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 Reloading
 The Concealed Carry Quiz

More Background

The following link actually contains a series of links. The initial pictures are a slide show with narration. Click on the "Photo Gallery" to begin the slides.

To view the videos beneath the MS-13 photo, click the title that you wish to view.

- [MS-13: The National Threat](#)

A National Assessment

- [FBI: The MS-13 Threat](#)

MS-13 Videos

- [MS 13 Report](#)
- [MS 13 - America's Most Dangerous Gang - Part 1](#)
- [MS 13 - America's Most Dangerous Gang - Part 2](#)
- [MS-13: Violence in El Salvador](#)

MS Links

- [MS 13 - Background](#)
- [Mara Salvatrucha](#)
- [For Gangs, Tattoos Out; College Lock In](#)
- [Mara Salvatrucha 13 - Slide show with Hispanic rap](#)
- [More Mara Salvatrucha with rap](#)

La Sombra Negra - An Anti-MS-13 Vigilante Group

[La Sombra Negra](#)

Mara Salvatrucha In The News

[Nicaraguan police hand over MS-13 boss to Interpol in Managua](#)
[Albuquerque PD: New, violent gang in New Mexico](#)